

United States Court of Appeals
for the
District of Columbia Circuit



**TRANSCRIPT OF
RECORD**

ADDITION TO RECORD PER STIPULATION OF
COUNSEL.

Court of Appeals, District of Columbia

APRIL TERM, 1909.

No. 1999.

636

JOSEPH PARKER CAMP, APPELLANT,

vs.

KATE WILLARD BOYD, HENRY K. WILLARD, AND
GEORGE E. HOWE, DEVISEES IN TRUST UNDER THE
LAST WILL OF CALEB C. WILLARD, DECEASED.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED APRIL 29, 1909.

In the Court of Appeals of the District of Columbia.

No. 1999.

JOSEPH PARKER CAMP, Appellant,

vs.

KATE WILLARD BOYD ET AL., Appellees.

Stipulation.

It is stipulated by and between counsel for appellant and appellees that the abstract of title of William Redin referred to in the stipulation filed in Equity cause No. 25974 on the 8th day of February, 1909, and hereunto annexed be incorporated in and made a part of the record in the above entitled cause.

WM. E. AMBROSE,
Attorney for Appellant.
JOHN B. LARNER,
Attorney for Appellees.

EXHIBIT B. F. I. No. 1.

At Law. No. 46756.

JOSEPH P. CAMP
^{vs.}
 CALEB C. WILLARD.

The title to part of lot No. 20, in sq. 254, sold as belonging to Wm. Dowling's heirs.

Lib. B. No. 2, p. 9.

In 1794 the lot belonged to Sam'l Blodgett, who, on the 28th Jan. '94, conveyed it, with other City lots, to Thos. Johnson and Thos. Peter, to secure the payment of the prizes which might be drawn in "the Hotel lottery," and to indemnify the City Commissioners.

Lib. G., 299.

Sam'l Blodgett to Edw'd Frethey, 14 Apr. 1801, lease for 99 years renewable forever, at an annual ground rent.

Ib., p. 306.

Edw'd Frethey to Fred'k. Betz, assignment of that Lease, 19th Sept. 1801.

I., p. 325.

Fred'k Betz to Geo. Betz, assignm't of said lease, 24 Jan. 1803.

K. No. 10, p. 204.

Geo. Betz to John Thorp of Baltimore, assignment of said Lease, 15th Feb. 1804.

Chan. Rec., 1.

A Chancery suit was instituted by Rob't Bickley against said Blodgett, Peter, Frethey and others, to obtain the Hotel which had been drawn by Bickley, and also the payment of \$26634. for other prizes found due to Bickley by Blodgett, and to have sold Blodgett's ground rents secured on City lots, and divers other City lots, for payment thereof; and Rob't Brent was appointed by the Court trustee. Johnson had died; and Thos. Peter was directed to join in the deeds with Brent to the purchasers. The decree is dated the 4th Oct. 1805.

Lib. S. No. 18, p. 1.

On the 15th Jan. 1807, said Brent, as trustee, sold and conveyed to Robt. F. Howe "all the right to the ground rent reserved by Blodgett by said lease, dated in 1801, which was in Blodgett previous to and at the time of making said decree; and all the right, title and interest therein which said Peter derived in and thereto by virtue

of said deed of 1794 referred to in said decree, or since that time through said Blodgett." And said Peter conveyed, "all the interest in said ground rent so reserved by said Blodgett which said Peter derived by virtue of said deed to him and Johnson or which he had since acquired through said Blodgett."

Lib. W. B. 36, 299.

The next deed I find on the records is in 1831, from Wm. Dowling to Rob't F. Howe. The lot had been sold for Corporation taxes on the 26th Feb'y 1826 to Anth'y Preston, who assigned the tax certificate to said Dowling, who obtained a deed from the Corporation. Dowling on the 30th May 1831 released and conveyed the lot to said Howe, "*saving the leasehold interest therein belonging to him,*" (Dowling.)

Copy Obtained from New Jersey.

Rob't F. Howe by his Will, dated 28th July 1830, signed in the presence of three witnesses, proved 4th June 1831, at Burlington, New Jersey, gave a number of legacies, and an annuity of \$250 a year to his sister Mary A. Innslee, and which he charged on his estate, and authorized his Executors to sell all his real estate for the purpose of paying said legacies and annuity. Three Executors were named, one of whom resigned.

W. B. 56, 449.

Deed from Sarah How and Edw'd P. Pearson, two of Rob't F. Howe's Executors, to Wm. Dowling, 18th July 1835.

It recites the deed from Brent and Peter to Rob't F. Howe of 1807; that the lot was then subject to a lease dated the 4th April 1801; it also recites the said Will of Rob. F. Howe, authorizing his Executors to sell his estate; that they had sold said lot on the 1st Nov'r 1834 to Wm. Dowling, who was then "*in possession of said premises under said lease above mentioned;*" and said Executors convey the lot to Dowling in fee by this deed.

Lib. J. A. S. No. 8, p. 444.

The next deed is from W. S. Cox to Smith & Naylor, 21 Sep. 1849.

That recites that Cox had purchased the lot at Marshal's sale under a judgment against Dowling—Judicials 192, Mar. 1836.

There is no return of the execution; nor does any deed appear on the records to Cox, as the foundation for this deed from him.

No. 35, p. 487.

Smith & Naylor to Wm. Dowling—29 Oct. 1851—deed of said lot, for \$1200.

No. 32, p. 154.

Dowling to Howard, 29 Oct. 1851—deed to secure the purchase money.

No. 46, p. 136.

Howard to Dowling, 5 Oct. 1852, release of the last mortgage.

15 Oct., 1852.

Wm. Dowling's Will—3 witnesses—he gave all his property to his son, Wm. Dowling, for life; and after his death to his heirs at law.

This devise gave Wm., the son, the fee in this lot.

Wm. Dowling, the son, died, leaving two daughters, one of whom is under age. Decree of the Court of this District, by consent, to sell the lot for the purpose of division between them.

It was under this decree that Mr. Isherwood purchased the lot.

Remarks.

There are two or three points for remark.

1. The lease, made in 1801, for 99 years, renewable forever. The last assignment I can find was to John Thorp of Baltimore, in 1804. I can find no assignment of it to Wm. Dowling. No doubt it was void against Thos. Peter as holding under the prior deed of 1794; but the parties do not seem so to have regarded it; Brent and Peter in 1807 sold to Howe only the ground, subject to the existing lease. The lease is recognized as existing in the deed made by Dowling in 1831, releasing the property from the tax sale, and as then belonging to Dowling, under the lease. So it is in the deed of 1835, from Howe's Executors to Dowling, which states "that Dowling was then in possession *under* said lease;" and, if he was so, the Lease would be merged in the fee by the conveyance of the fee then made to Dowling by Howe's Executors. The proper evidence of his holding under the lease would be an assignment thereof to him from Thorp; and, although I can find no assignment of the lease to Dowling, I cannot but think there must have been one, and that he had become the owner of the leasehold interest at the time Howe's Executors made the deed to him. He is represented to have been in possession more than 30 years. The last assignment of the lease is to John Thorp in 1804, more than sixty years since; and, I am informed by the Counsel for the heirs of Dowling, no known claim in that time by Thorp or his representatives. It is my duty to point out the absence of any assignment of the lease to Dowling; but you must judge as to the risk of disturbance.

2. The legacies charged by Rob't F. Howe's will on this lot, as well as on his other property, may safely at this day—near 34 years—be presumed to have been satisfied. The *annuity* to his sister of \$250 a year is a continuing charge. That may still be an incumbrance; though from the fact of no claim having been made, as I am informed, the probability is, that the annuitant is dead, or that the annuity has been provided for out of some other of Mr. Howe's property.

3. The decree under which the sale was made is by *consent*. This could not be in the case of a minor; but she can confirm it when of

age, and should then execute a Deed either to the trustee or the purchaser; and some security should be given that she shall do it as soon as she attains 21. I am informed she is within a year or so of the age.

4. I have examined the tax sales. This lot was several times sold for taxes; but always redeemed or settled.

Supreme Court of the District of Columbia.

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, do hereby certify that the annexed is a true copy of a Certificate of Title filed October 16, 1905, as an Exhibit to the Deposition (*de bene esse*) of Benjamin F. Isherwood, in Cause at Law No. 46576, entitled Joseph P. Camp *vs.* Caleb C. Willard, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 26th day of April A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

[Endorsed:] No. 1999. Joseph Parker Camp, appellant, *vs.* Kate Willard Boyd *et al.* Addition to Record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Apr. 29, 1909. Henry W. Hodges, Clerk.